

## **FINDING OF SUITABILITY TO TRANSFER**

### **JEFFERSON PROVING GROUND**

#### **AIRFIELD AREA**

**JULY 1999**

#### **1. PURPOSE**

The purpose of this Finding of Suitability to Transfer (FOST) is to document the environmental suitability of certain property at Jefferson Proving Ground (JPG), Madison, Indiana for transfer to the Ford Building and Lumber Supply Company for light industrial, commercial and agricultural re-use consistent with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Section 120 (h) and Department of Defense policy. In addition, the FOST identifies the restrictions as specified in the attached Environmental Protection Provisions necessary to protect human health or the environment after such transfer.

#### **2. PROPERTY DESCRIPTION**

The proposed property to be transferred consists of approximately 650 acres, which includes 21 buildings. The buildings are identified as follows: # 141, 301, 302, 303, 304, 305, 309, 310, 311, 312, 313, 314, 320, 321, 322, 323, 324, 325, 327, 329, and 331. A site map and property description are attached (Enclosures 1 and 2).

#### **3. ENVIRONMENTAL CONDITION OF THE PROPERTY**

A determination of the environmental condition of the facilities has been made based on the Community Environmental Response Facilitation Act (CERFA) Report (April 1994). The information provided is a result of a complete search of agency files during the development of these environmental surveys. The following documents also provided additional/updated information on environmental conditions of the property: Final Draft Remedial Investigation for Jefferson Proving Ground, Madison, Indiana (July 1994); Final Environmental Impact Statement for Disposal and Reuse of the Jefferson Proving Ground, Madison, Indiana (September 1995); Record of Decision for the Disposal and Reuse of JPG (December 1995); The Enhanced Preliminary Assessment Report, Jefferson Proving Ground (1990); Base Realignment and Closure Cleanup Plan (BCP) Version 1, (April 1994); BCP Version 2 (October 1995); BCP Version 3 (July 1997); Jefferson Proving Ground

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South of the Firing Line, Final Asbestos Survey Summary Report (September 1993); Draft Summary Report Annual Asbestos ReInspection (March 1995); Radon Survey (March-June 1989); Archives Search Report for Ordnance and Explosive Waste Chemical Warfare Materials, Jefferson Proving Ground, Madison, Indiana (June 1995); Final Removal Report Ordnance Removal Action Jefferson Proving Ground, Madison, Indiana March (1999); The U.S. Agriculture, Natural Resources Conservation Service Report, "Climatological Station Index for Indiana" (Feb 1991), Field Office Technical Guide, Section One; Indiana Department of Environmental Management, Hazardous Waste Facilities Branch letter of June 4, 1996; Indiana Department of Environmental Management Leaking Underground Storage Tank Section letters of March 2, 1999; Statement of Clearance Airfield (West) and Woodfield Road Sites, Jefferson Proving Ground, Madison, Indiana April 27, 1999; and U.S. Department of Transportation, Federal Aviation Administration letter of May 19, 1999.

### **3.1 Environmental Condition of Property Categories**

The Department of Defense (DOD) Environmental Condition of Property (ECP) Categories for the property is as follows:

ECP Category 1: All of the property except as otherwise noted below.

ECP Category 2: Buildings # 303, 310, 313, 322, 325, former concrete vault .at airport.

ECP Category 3: The following Remedial Investigation (RI) sites totaling less than 1 acre: RI site #5 (Wood Storage Pile), RI site #6 (Wood Burning Area), and RI site #13 (Old Fire Training Pit). A more detailed discussion of these RI sites is provided in Section 4.

A summary of the ECP Categories for specific buildings or parcels is provided in Table 1 -Description of property (Enclosure 3) .

### **3.2 Storage, Release, or Disposal of Hazardous Substances**

Hazardous substances were stored for one year or more in excess of the 40 CFR Part 373 reportable quantities in the following buildings or areas:

Building 301  
Building 305  
Building 325

Hazardous substances were released or disposed of in excess of the 40 CFR Part 373 reportable quantities in the following buildings or areas:



RI site #5 (Wood Storage Pile) RI site #6 (Wood Burning Area) RI site #13 (Old Fire Training Pit)

A summary of the buildings or areas in which hazardous substance activities occurred is provided in Table 2 Notification of Hazardous Substance Products Storage, Release, or Disposal (Enclosure 4).

### **3.3 Storage, Release or Disposal of Petroleum and Petroleum Products**

There were 9 underground storage tanks and above-ground storage tank (UST/AST) that were on the property and were used for storage of petroleum products. The UST's were located at the following sites: Buildings 301, 303, 304, 305, 310, 313, 322, 325 and the concrete vault at the airport. The AST was located next to Building 322. All UST's were removed in accordance with Indiana state Leaking Underground Storage Tank requirements. The AST was removed prior to the closure of JPG in the summer of 1995.

Petroleum product releases in excess of 55 gallons occurred at the following UST/AST sites: next to Buildings # 303, 310, 313, 322, 325 and the concrete vault at the airport. The release of these petroleum products was remediated at the time of the UST/AST closure. A summary of the petroleum product activities is provided in Table 3 - Notification of Petroleum Products Storage, Release or Disposal (Enclosure 5).

### **3.4 Polychlorinated Biphenyl's (PCB) Equipment**

The following PCB containing equipment is located on the property:

NONE

### **3.5 Asbestos**

The following buildings do not contain asbestos containing material (ACM): building # 303, 304, 314, 323 and 327.

There is ACM in the following buildings: # 141, 301, 302, 305, 309, 310, 311, 312, 313, 320, 321, 322, 324, 325, 329 and 331.

The ACM in these buildings does not currently pose a threat to human health or the environment because all friable asbestos that posed an unacceptable risk to human health has been removed or been encapsulated. The deed will include the asbestos warning and covenant included in the Environmental Protection Provisions (Enclosure 6).

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### **3.6 Lead Based Paint**

The buildings located within the area of this FOST have not been sampled for lead-based paint. However, based on the age of the buildings (constructed prior to 1978), all of the buildings within this parcel are presumed to contain leadbased paint.

The deed will include the lead-based paint warning and covenant provided in the Environmental Protection Provisions (Enclosure 6).

### **3.7 Radiological Materials**

NONE

### **3.8 Radon**

JPG has a total of 16 priority 1 structures (residences, childcare centers, schools, and hospitals). All JPG priority

1 structures) were assessed for indoor levels of radon and none exceeded the U.S. EPA suggested safe level of 4.0 picocuries per liter (pCi/l) criteria as indicated in the Jefferson Proving Ground Radon Sampling Program Report of November 2, 1989.

The buildings within this parcel are radon assessed priority 3 structures were not assessed for indoor levels of radon because there is no reason to believe they had significantly higher levels of radon than the JPG priority 1 structures that did not exceed the U.S. EPA suggested safe level of 4.0 pCi/l.

[1] draft Department of Army Pamphlet 200-1, para 9-4b(9) the priorities for radon assessment and mitigation are:

(a) Priority 1: Day care centers, hospitals, schools, and living areas (i.e., family housing, bachelor officer quarters/bachelor enlisted quarters (BOQ/BEQ), and billets).

(b) Priority 2: Areas having 24-hour operations, such as operations and training centers or research, development, test, and evaluation (RDT&E) facilities.

(c) Priority 3: All other routinely occupied structures.

### **3.9 Unexploded Ordnance**

A review of available records and information indicated the possibility of unexploded ordnance (UXO) on approximately 550 acres of this parcel. An UXO clearance project was conducted between August 1997 and November 1998. The approximate 591





acres were surveyed to a depth of 4 feet below the surface, resulting in the removal of 405 ordnance items, 38 of which were suspected of containing explosives. The UXO Statement of Clearance is provided as Enclosure 7. Since this portion of JPG was a military training area, and ordnance items were found, the potential UXO notification provision in Enclosure 6 will be provided in the deed.

### **3.10 Environmental Conditions of Adjacent Property**

Adjacent property contains the following Remedial Investigation (RI) sites:

RI site # 1	Building 185 Incinerator
RI site # 2	Sewage Treatment Plant Water Quality Laboratory
RI site # 12a	Building 602 Solvent Pit - Groundwater contamination
RI site # 12b	Building 617 Solvent Pit - Groundwater contamination
RI site # 13	Old Fire Training Pit
RI site # 14	Yellow Sulfur Area
RI site # 25	Paper Mill Road Disposal Area
RI site # 27	Sewage Sludge Application Area
RI site # 33	Building 333, New Incinerator
RI site # 49	Possible Explosive Ordnance South of the Firing Line

These sites are located from approximately 100 feet to several hundred feet from the property. These areas are fenced off and posted with restricted access signs. There are no current exposure pathways because there is no usage of groundwater within the JPG cantonment and the entire facility is supplied with drinking water from the municipal water system of Madison, Indiana. In addition, the clay soil composition and vegetation minimize migration of contaminants. Because of the potential for exposure to contaminated groundwater from RI sites 12a and 12b, until a complete characterization of the environmental contamination present at RI sites 12a and 12b has been completed and/or action taken to mitigate any threat to human health and the environment, groundwater usage is restricted as identified in section 8 of Enclosure 6 (Environmental Protection Provisions).

An UXO engineering evaluation/cost analysis (EE/CA) is currently being performed west of the subject parcel for the area west of the airfield that has a potential for UXO as identified in the Archive Search Report. Access to all potential UXO areas is restricted and posted with warning signs. In addition, JPG limits the general public's access to the property and provides an UXO briefing and safety awareness handouts to individuals that work/reside on the property.

#### **4. REMEDIATION**

There are no environmental remediation orders or agreements applicable to the property being transferred. There is no documented evidence of groundwater contamination on the property. The following solid waste management units/operable units are located on the property:

RI site #5 - Wood Storage Area

RI site #6 - Wood Burning Area

It was determined that no further remedial actions were required for RI sites # 5 and 6. The IDEM concluded that residual metal contamination resulting from UXO detonation within the parcel which appears to pose no risk to human health for non-residential use of the subject parcel. A restriction will be included in the deed limiting the property to non-residential activities. Additional information regarding these RI sites is provided at Table 1.

#### **5. REGULATORY/PUBLIC COORDINATION**

The U.S. EPA Region 5, the Indiana Department of Environmental Management (IDEM), and the public were notified of the initiation of this FOST. Regulatory/public comments received during the FOST development were reviewed and incorporated as appropriate. A copy of any unresolved regulatory/public comments with an Army response are included in the FOST (Enclosures 8 & 9).

#### **6. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) COMPLIANCE AND CONSISTENCY WITH LOCAL REUSE PLAN**

The environmental impacts associated with the proposed transfer of the property have been analyzed in accordance with the National Environmental Policy Act (NEPA). Any encumbrances or conditions identified in such analysis as necessary to protect human health of the environment have been incorporated into the FOST.

#### **7. ENVIRONMENTAL PROTECTION PROVISIONS**

On the basis of the above results from the site-specific EBS and other environmental studies and in consideration of the intended use of the property, certain terms and conditions are required for the proposed transfer. These terms and conditions are set forth in the attached Environmental Protection Provisions and will be included in the deed (Enclosure 6) .

#### **8. FINDING OF SUITABILITY TO TRANSFER**

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Based on the above information, I conclude that all Department of Defense requirements to reach a finding of suitability to transfer the property to the Ford Lumber and Building Supply Company for light industrial, commercial and agricultural reuse have been met for the property subject to the terms and conditions set-forth in the attached Environmental Protection Provisions (Enclosure 6). All removal or remedial actions necessary to protect human health and the environment have been taken and the property is transferable under CERCLA Section 120 (h) (3) . In addition to the Environmental Protection Provisions, the deed for this transaction will contain:

The covenant under CERCLA Section 120 (h)(3)(A)(ii)(I) warranting that all remedial action under CERCLA necessary to protect human health and the environment with respect to hazardous substances remaining on the Property has been taken before the date of transfer.

The covenant under CERCLA Section 120(h)(3)(A)(ii)(II) warranting that any remedial action under CERCLA found to be necessary after the date of transfer with respect to such hazardous substances on the Property shall be conducted by the United States.

The clause as required by CERCLA Section 120 (h)(3)(A) (iii) granting the United States access to the Property in any case in which remedial action or corrective action is found to be necessary after the date of transfer.

As required under CERCLA Section 120(h) and DOD FOST Guidance, notification of hazardous substance activities shall be provided in the deed. See Table 2 - Notification of Hazardous Substance Storage, Release, or disposal (Enclosure 4).

P.S. Morris  
Colonel, GS  
Deputy chief of Staff  
For Engineering, Housing,  
Environment, and Installation  
Logistics

9 Enclosures

Enclosure 1 - Site Map of Property

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- Enclosure 2 - Description of Property
- Enclosure 3 - Table 1 Description of Property (Buildings)
- Enclosure 4 - Table 2 - Notification of Hazardous substance  
Storage, Release or Disposal
- Enclosure 5 - Table 3 - notification of Petroleum Product  
Storage, Release, or Disposal
- Enclosure 6 - Environmental Protection Provisions
- Enclosure 7 - Unresolved Regulatory/Public Comments
- Enclosure 8 - Army Response to Unresolved Regulatory/Public  
Comments
- Enclosure 9 - Unexploded Ordnance Statement of Clearance

ENCLOSURE 1 NOT AVAILABLE

### DESCRIPTION OF PROPERTY

1. Start at the intersection of Tokyo Road and Woodfill Road of the Jefferson Proving Ground (JPG) Cantonment Area.
2. Then south on Tokyo Road to the intersection of Tokyo Road and Engineer's Road.
3. Then east on Engineer's Road to the intersection of Engineer's Road and Paper Mill Road.
4. Then north on Paper Mill Road to approximately 100 meters north of the intersection of Paper Mill Road and Ordnance Drive.
5. Then west approximately 200 meters, then north approximately 240 meters to the southern most line of railroad tracks and then east approximately 200 meters to Paper Mill Road.
6. Then north on Paper Mill Road to the intersection of Paper Mill Road and Woodfill Road.
7. Then west on Woodfill Road to the intersection of Tokyo

Enclosure 2



**TABLE 1**  
**Table 1 - Description of Property (Buildings)**

<b>Building Number and Property Description</b>	<b>MRS Parcel Designation</b>	<b>Condition Category **</b>	<b>Remedial Actions</b>
Bldg. 141 is a 68 square foot Switch House	107Q-/A/L	1	NONE
Bldg. 301 is a 23,947 square foot general purpose warehouse/storage building	105D-/A/L/PS/HS	1	NONE
Bldg. 302 is a 632 square foot utility building	105Q-/A/L	1	NONE
Bldg. 303 is a 99 square foot fuel oil dispenser	105D-/A/L/PI/PR	2	Former UST Removed
Bldg. 304 is a 207 square foot metal shed/storage building	102Q-/L	1	NONE
Bldg. 305 is a 708 square foot general warehouse/storage (formally used for hazardous waste storage)	105D-/A/L/P/PS/HS	1	Closed iaw IDEM requirements as documented in IDEM hazardous Waste Facilities Branch letter of June 4, 1996
Bldg. 309 is a 106 square foot utility building	105Q-/A/L	1	NONE
Bldg. 310 is a 1,470 square foot former heating loot	105D-/A/L/PR	2	Former UST Removed
Bldg. 311 is a 3,581 square foot storage building	106Q-/A/L	1	NONE
Bldg. 312 is a 106 square foot utility building	102Q-/A/L	1	NONE
Bldg. 313 is a 8,100 square foot former Bachelor Officer Quarters	102D-/A/L/PS	2	Former UST Removed
Bldg. 314 is a 3,200 square foot general purpose warehouse/storage building	109Q-/L	1	NONE
Bldg. 320 is a 65 square foot former magazine	116Q-/A/L	1	NONE
Bldg. 321 is a 106 square foot transformer house	116Q-/A/L	1	NONE
Bldg. 322 is a 4,352 square foot demolition building	118D-/A/L/PS	2	Former AGT/UST Removed
Bldg. 323 is a 396 square foot former high explosive magazine	124Q-/L	1	NONE
Bldg. 324 is a 508 square foot former high explosive magazine	125Q-/A/L	1	NONE
Bldg. 325 is a 5,731 square foot former high explosive disassembly loot	75D-/A/L/PS/HS	2	Former UST Removed
Bldg. 327 is a 449 square foot former compartment magazine	78Q-/L	1	NONE
Bldg. 329 is a 106 square foot transformer building	71Q-/A/L	1	NONE
Bldg. 331 is a 711 square foot former employee change house	71Q-/A/L	1	NONE
Remedial Investigation (RI) site 05 (Wood Storage Area)		3	No Further Remedial Action Required iaw IDEM letter of August 24,1998
Remedial Investigation (RI) site A6 (Wood Burning Area)		3	No Further Remedial Action Required iaw IDEM letter of August 24,1998

**\*\*Environmental Condition Codes**

**Category 1:** Areas where no release or disposal of hazardous substance or petroleum products has occurred (including no migration of these substances from adjacent areas). **Category 2:** Areas where only release or disposal of petroleum products has occurred. **Category 3:** Areas where release, disposal, and/or migration of hazardous substances has occurred, but

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at concentrations that do not require a removal or remedial response. **Category 4:** Areas where release, disposal, and/or migration of hazardous substances has occurred, and all removal or remedial actions to protect human health and the environment have been taken. **Category 5:** Areas where release, disposal, and/or migration of hazardous substances has occurred, and removal or remedial actions are underway, but all required remedial actions have not yet been taken. **Category 6:** Areas where release, disposal, and/or migration of hazardous substances has occurred, but required actions have not yet been implemented. **Category 7:** Areas that are not evaluated or require additional evaluation.

**CERFA PARCEL LABEL DEFINITIONS**

13 P-/A/L/

A = ASBESTOS  
L = LEAD  
R = RADON  
X = UNEXPLODED ORDNANCE  
P = PCB  
RD RADIONUCLIDES  
PR = PETROLEUM RELEASE  
PS = PETROLEUM STORAGE  
HR = HAZARDOUS SUBSTANCE RELEASE  
HS = HAZARDOUS SUBSTANCE STORAGE  
(P) = POSSIBLE QUALIFIER

P = CERFA PARCEL  
Q = CERFA PARCEL WITH QUALIFIERS)  
D = CERFA DISQUALIFIED PARCEL  
E = CERFA EXCLUDED PARCEL

Enclosure 3

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TABLE 2

Table 2 - Notification of Hazardous Substance Storage, Release, and Disposal\*

Building Number	Name of Hazardous Substance(s)	Date of Storage, Release, or Disposal	Remedial Actions
Building 301 is a 947 square foot general purpose warehouse/storage building	Contaminated Soil - POL Associated with leakage from containers	Unknown	Stored in containers, minor spills associated with the storage were remediated at the time of the release and do not require any further remedial response.
Building 305 is a 305 square foot general purpose warehouse/storage building (formerly used for hazardous waste storage)	Asbestos, PCB, solvents, organic chemical waste	1980 to - 1995	Stored in containers, minor spills associated with the storage were remediated at the time of the release and do not require any further remedial response. Closure of Building 305 concurred to by IDEM Hazardous Waste Facilities Branch in letter of June 4, 1996.
Building 325 is a 31 square foot former high explosive assembly plant	Developers, fixers, cyanide (Photography processing)	-1965 to - 1977	Stored in containers, minor spills associated with the storage were remediated at the time of the release and do not require any further remedial response.
Remedial investigation site #5 (Wood Storage area)	Potential PCP impregnated wood storage area	-1975-1993	No Further Remedial Action Required is IDEM letter of August 24, 1998
Remedial investigation site #6 (Wood Burning area)	Former wood burning area (Potential PCP impregnated wood)	-1975-1993	No Further Remedial Action Required is IDEM letter of August 24, 1998

The information contained in this notice is required under the authority of regulations promulgated under section 120(h) of the Comprehensive Environmental Response, Liability, and Compensation Act (CERCLA or Superfund) 42 U.S.C. section 9620(h). **This table provides information on the storage of hazardous substances for one year or more in quantities greater than or equal to 1000 kilograms of the hazardous substance's CERCLA reportable quantity (which ever is greater). In addition, it provides information on the known release of hazardous substances in quantities greater than or equal to the substances CERCLA reportable quantity. See 40 CFR part 373.**

Enclosure 4

TABLE 3

Table 3 - Notification of Petroleum Product Storage, Release, and Disposal

Building Number	Types of Petroleum Products)	Date of Storage, Release or Disposal	Remedial Actions
Bldg. 303 is a 99 square foot fuel oil dispenser	POL	Unknown	Former UST - Removed/Action complete iaw IDEM LUST letter of (X)
Bldg. 310 is a 1,970 square foot former heating plant	POL	Unknown	Former UST - Removed/Action complete iaw IDEM LUST letter of (X)
Bldg. 313 is a 8,100 square foot former Bachelor Officer Quarters	Fuel Oil N 2	Unknown	Former UST - Removed/Action complete iaw IDEM LUST letter of March 2, 1999
Bldg. 322 is a 4,352 square foot demolition building	Fuel Oil lf 1 & 2	Unknown	Former UST/AGT - Removed/Action complete iaw IDEM LUST letter of March 2, 1999
Bldg. 325 is a 5,731 square foot former high explosive disassembly plant	Fuel Oil N 2	Unknown	Former UST - Removed/Action complete iaw IDEM LUST letter of March 2, 1999
Concrete Vault at airport	Fuel Oil	Unknown	Action complete iaw IDEM - LUST letter of (X)

Enclosure 5

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## ENCLOSURE 6

### DEED PROVISIONS

#### ENVIRONMENTAL PROTECTION PROVISIONS

The following conditions, restrictions, and notifications, or substantially equivalent provisions, will be placed in the deed to ensure protection of human health and the environment and to preclude any interference with ongoing or completed remediation activities at Jefferson Proving Ground.

1. **INCLUSION OF PROVISIONS:** The person or entity to whom the property is transferred shall neither transfer the property, lease the property, nor grant any interest, privilege, or license whatsoever in connection with the property without the inclusion of the environmental protection provisions contained herein, and shall require the inclusion of such environmental protection provisions in all further deeds, transfers, leases, or grant of any interest, privilege, or license.

2. **NO LIABILITY FOR NON-ARMY CONTAMINATION:** The Army shall not incur liability for additional response action or corrective action found to be necessary after the date of transfer in any case in which the person or entity to whom the property is transferred, or other non-Army entities, is identified as the party responsible for contamination of the property.

3. **CERCLA COVENANTS AND NOTICE**

Pursuant to Section 120 (h)(3) of the Comprehensive Environmental Response Compensation, and Liability Act, as amended, 42 U.S.C. Section 9601 et seq ("CERCLA"):

A. For the Property:

1. The Grantor hereby notifies the Grantee of the storage, release and disposal of hazardous substances on the Property. For the purpose of this Deed, "hazardous substances" shall have the same meaning as section 101 (14) of CERCLA. Available information regarding the type, quantity, and location of such substances and action taken is provided in Enclosures 3 and 4 herein. Based upon this information, the Grantor has determined the Property suitable for transfer in accordance with ,



the provisions of this Deed.

2. The Grantor hereby covenants that:
  - a. all remedial action necessary to protect human health and the environment with respect to any such hazardous substances remaining on the Property has been taken before the date of conveyance hereunder; and
  - b. any additional remedial action found to be necessary with regard to such hazardous substances remaining after the date of the conveyance that resulted from past activities shall be conducted by the Grantor. This covenant shall not apply in any case in which the person or entity to whom the Property is transferred is a potentially responsible party under CERCLA with respect to the Property.

- B. The Grantor reserves an easement and right of access on, over and through the Property for inspection, investigation, monitoring, sampling, testing, remedial action, corrective action or other action (collectively "Response Actions") that the Grantor deems necessary after the date of this conveyance in order to fulfill the Grantor's environmental responsibilities under this Deed or applicable law, including the right of the Grantor to ensure compliance with the Restrictive Covenants imposed by this Deed. In exercising these rights of access, except in case of imminent endangerment to human health, or the environment, the Grantor shall give the Grantee, or the then record owner, reasonable prior written notice of Response Actions to be taken in, or on the Property and shall use reasonable means, without significant additional cost to the Grantor, to avoid and/or minimize interference with the Grantee's use of the Property. Subject to the provisions of this Subsection 3.B. and except as otherwise provided for by law, the Grantee, the then record owner, and any other person shall have no claim or cause of action against the Grantor or any officer, agent, employee or contractors for interference with the use of the Property based upon Response Actions taken under this Subsection 3.B.

#### **4. ENVIRONMENTAL BASELINE SURVEY ("EBS") AND FINDING OF SUITABILITY TO TRANSFER ("FOST")**

- A. The Grantee acknowledges receipt of the Environmental Baseline Survey (EBS) also known as the Community Environmental Response Facilitation Act (CERFA) Report, dated April 1994, prepared by the Grantor for the Property, and the Grantee agrees to the best of the Grantee's knowledge that they accurately describe the





environmental condition of the Property. The Grantee has inspected the Property and accepts the physical condition and current level of environmental hazards on the Property and deems the Property to be safe for the Grantee's intended use.

- B. If after conveyance of the Property to the Grantee, there is an actual or threatened release of a hazardous substance on the Property, or in the event that a hazardous substance is discovered on the Property after the date of the conveyance, whether or not such substance was set forth in the EBS, the Grantee, its successors or assigns shall be responsible for such release or newly discovered substance unless such release or such newly discovered substance was due to Grantor's activities, use, or occupation of the Property, or the activities of Grantor's contractors and/or agents or such newly discovered substance was present on the Property at or prior to the date of conveyance. The Grantee, as consideration for the conveyance, agrees to hold the Grantor harmless from, and indemnify the Grantor against any liability for any claims arising out of or in any way predicated on release of any hazardous substance on the Property occurring after the conveyance, where such substance was placed on the Property by the Grantee, its successors or assigns, its agents, contractors, invitees, or its lessees or sublessees after the conveyance or lease. This paragraph shall not affect the Grantor's responsibilities to conduct response actions or corrective actions that are required by applicable laws and regulations.

5. NOTICE OF UNEXPLODED ORDNANCE AND RESTRICTIVE COVENANT  
Notice

- (1) The Grantor completed a comprehensive records search and, based upon that search, has undertaken and completed statistical and physical testing of areas on the Property where the presence of unexploded ordnance ("UXO") was considered possible. Based upon said search and testing, the Grantor represents that, to the best of its knowledge, no UXO is currently present on the Property. Notwithstanding the records search and testing conducted by the Grantor, the parties acknowledge that, due to the former use of the Property as an active military installation, there is a possibility that UXO may exist on the Property. Upon due notice, the Grantor agrees to remove any such remaining UXO discovered on the Property, as required under applicable law and regulations, as expeditiously as is reasonable and practicable, subject to the availability of funds.,



- (2) If the Grantee, any subsequent owner, or any other person should find any UXO on the Property, they should not move or disturb the item and shall immediately call the local police or local fire authorities and U.S. Army Corps of Engineers, Louisville District, P.O. Box 59, Louisville, Kentucky 40201, (502) 625-7374.
- (3) The Grantee acknowledges receipt of the "Final Removal Report Ordnance Removal Action Jefferson Proving Ground Madison, Indiana (March 1999).
- (4) UXO was found and cleared from the Property described in Appendix A of the Final Removal Report Ordnance Removal Action Jefferson Proving Ground Madison, Indiana, March 1999. Within the boundaries of the Property, the Grantor cleared all UXO which was reasonably possible to detect, to a depth of four (4) feet below the surface of the ground, except that no survey or clearance work was done beneath those areas within the parcel that were paved as shown-in Appendix A of the Final Removal Report Ordnance Removal Action Jefferson Proving Ground Madison, Indiana, March 1999. The Grantor and the Grantee agree that the level of survey and clearance work that has been conducted for the Property is fully protective of human health and safety for unrestricted end use in accordance with the Statement of Clearance the Airfield (West) and Woodfield Road Sites, Jefferson Proving Ground Madison, Indiana, April 27, 1999.

**6. NOTICE OF THE PRESENCE OF LEAD BASED PAINT AND COVENANT AGAINST THE USE OF THE PROPERTY FOR RESIDENTIAL PURPOSES**

A. The Grantee is hereby informed and does acknowledge that all buildings on the Property, which were constructed or rehabilitated prior to 1978, are presumed to contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Every purchaser of any interest in Residential Real Property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buver with any information on lead-based



paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint-hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase. "Residential Real Property" means any housing constructed prior to 1978, except housing for the elderly (households reserved for and composed of one or more persons 62 years of age or more at the time of initial occupancy) or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.

B. Available information concerning known lead based paint and/or lead-based paint hazards, the location of lead-based paint and/or lead-based paint hazards, and the condition of painted surfaces is contained in the Environmental Baseline Survey, which has been provided to the Grantee. All purchasers must also receive the federally approved pamphlet on lead poisoning prevention. The Grantee hereby acknowledges receipt of all of the information described in this subparagraph.

C. The Grantee acknowledges that it has received the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards prior to execution of the deed.

D. The Grantee covenants and agrees that it shall not permit the occupancy or use of any buildings or structures on the Property as Residential Real Property without complying with this section and all applicable federal, state, and local laws and regulations pertaining to lead-based paint and/or lead-based paint hazards. Prior to permitting the occupancy of the Property where its use subsequent to sale is intended for residential habitation, the Grantee specifically agrees to perform, at its sole expense, the Army's abatement requirements under Title X of the Housing and Community Development Act of 1992 (Residential Lead-Based paint Hazard Reduction Act of 1992) (hereinafter Title X). The Grantee shall, after consideration of the guidelines and regulations established pursuant to Title X and after consultation with the appropriate state environmental agency: (1) inspect for the presence of lead-based paint and/or lead-based paint hazards; (2) abate and eliminate lead-based paint hazards; and (3) comply with all applicable notice and disclosure requirements under Title X and applicable state law. In complying with these requirements, the Grantee covenants and agrees to be responsible for any abatement or remediation of lead based paint or lead-based paint hazards on the Property



found to be necessary as a result of the subsequent use of the property for residential purposes.

The Grantee further agrees to indemnify and hold harmless the Army, its officers, agents and employees, from and against all suits, claims, demands or actions, liabilities, judgments, costs and attorney's fees arising out of, or in a manner predicated upon personal injury, death or property damage resulting from, related to, caused by or arising out of lead-based paint or leadbased paint hazards on the Property if used for residential purposes.

**7. NOTICE OF THE PRESENCE OF ASBESTOS AND COVENANT**

A. The Grantee is hereby informed and does acknowledge that friable and non-friable asbestos or asbestos-containing materials ("ACM") have been found on the Property, as described in the EBS. To the best of the Grantor's knowledge, the ACM on the Property does not currently pose a threat to human health or the environment.

B. The Grantee covenants and agrees that its use and occupancy of the Property will be in compliance with all applicable laws relating to asbestos; and that the Grantor assumes no liability for any future remediation of asbestos or damages for personal injury, illness, disability, or death, to the Grantee, its successors or assigns, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos or ACM on the Property, whether the Grantee, its successors or assigns have properly warned or failed to properly warn the individual(s) injured. The Grantee agrees to be responsible for any future remediation of asbestos found to be necessary on the Property. The Grantee assumes no liability for damages for personal injury, illness, disability, death or property damage arising from (1) any exposure or failure to comply with any legal requirements applicable to asbestos on any portion of the Property arising prior to the Grantor's conveyance of such portion of the Property to the Grantee pursuant to this Deed, or (2) any disposal, prior to the Grantor's conveyance of the Property of any asbestos or ACM.

C. Unprotected or unregulated exposures to asbestos in product manufacturing, shipyard, building construction workplaces have been associated with asbestos-related diseases. Both Occupational Safety and Health





Administration (OSHA) and the Environmental Protection Agency (EPA) regulate asbestos because of the potential hazards associated with exposure to airborne asbestos fibers. Both OSHA and EPA have determined that such exposure increases the risk of asbestos-related diseases, which include certain cancers and which can result in disability or death.

D. The Grantee acknowledges that it has inspected the property as to its asbestos content and condition and prior to accepting the responsibilities imposed upon the Grantee under this section. The failure of the Grantee to inspect, or to be fully informed as to the asbestos condition of all or any portion of the property offered, will not constitute grounds for any claim or demand against the United States, or any adjustment under this Deed.

E. The Grantee further agrees to indemnify and hold harmless the Grantor, its officers, agents and employees, from and against all suits, claims, demands or actions, liabilities, judgments, costs and attorney's fees arising out of, or in any manner predicated upon, exposure to asbestos on any portion of the Property after this conveyance of the Property to the Grantee or any future remediation or abatement of asbestos or the need thereof. The Grantee's obligation hereunder shall apply whenever the United States incurs costs or liabilities for actions giving rise to liability under this section.

## **8 RESTRICTIVE COVENANTS**

A. In order to protect human health and the environment, and promote community objectives, and further the common environmental objectives Of the Grantor and the reuse plan of the Grantee, the parties agree to be bound by the residential use and groundwater restrictions ("Restrictions") set forth below in perpetuity, or until said restriction is released by the Grantor, as provided for below. These Restrictions benefit the lands retained by the Grantor, the State of Indiana and the public welfare generally; are consistent with state and federal environmental statutes.

### **B. RESIDENTIAL USE RESTRICTION**

The Grantee and its successors and assigns covenant not to use the portion of the Property for residential purposes, residential purposes to include, but not be limited to housing, day care facilities, schools, and assisted living facilities.

### **C. GROUNDWATER RESTRICTION**

The GRANTEE, its successors and assigns, shall not access



or use groundwater underlying the Property for drinking water purposes. For the purpose of this restriction, "groundwater" shall have the meaning as in section 101 (12) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

#### **D. MODIFICATIONS**

1. Upon completion by the GRANTOR of such remediation on adjacent sites, the GRANTEE may request the approval of the Environmental Protection Agency (EPA) and the Indiana Department of Environmental Management (IDEM) and, if required, any other regulatory agency to release or modify the Groundwater Restriction. Upon receipt of the necessary regulatory approvals, the GRANTOR agrees to release or modify the groundwater restriction by executing and recording, in the same land records of the State of **Indiana as the deed, a partial Release of Covenant**. The GRANTEE shall bear the cost of recording and reasonable administrative fees.

2. Nothing contained herein shall preclude the Grantee from undertaking, in accordance with applicable law, such additional remediation necessary to allow for the release or modification of the above Restriction. Any such additional remediation shall be undertaken at no cost to the Grantor and shall be subject to the prior written consent of the Grantor. This consent may be conditioned upon such terms and conditions as the Grantor deems reasonable and appropriate, including the securing of performance or payment bonds or insurance.

#### **E. ENFORCEMENT**

##### **1. Rights of the United States**

The above Restrictions benefit the public in general and the territory surrounding the Property, including lands retained by the Grantor, and therefore, the Restrictions are binding on the Grantee, its successors and assigns; shall run with the land; and are forever enforceable by the United States government.

##### **2. Liability of the Grantee**

Notwithstanding any other provision of this Deed, any agreement between the Grantee and the Grantor, the provisions of CERCLA or Section 330 of the national Defense Authorization Act of 1993, as amended, the Grantee and its successors and assigns covenant and agree to be fully responsible for any investigation and/or remediation of hazardous

substances, pollutants or contaminants, or petroleum or petroleum derivatives, to the extent that such investigation and/or remediation results from a violation of the above Restrictions.

3. Indemnification

The Grantee and its successors and assigns agree to indemnify and hold the Grantor, its officers, agents, and employees harmless from and against all suits, claims, demands, judgments, fines or penalties, liabilities, costs, or attorneys' fees to the extent such suits, claims, demands, judgments, fines or penalties arise out of a violation of the above Restrictions by the Grantee, its successors and assigns.

4. Transfer Documents

The Grantee and its successors and assigns covenant and agree that all leases, transfers, or conveyances of all or portions of the Property occurring subsequent to the date of this Deed shall be made expressly subject to, and shall have the benefit of, the provisions contained in this Section 8.

ENCLOSURES 7, 8, AND 9 NOT AVAILABLE